

REMARKS

1. The Examiner has required a restriction as between three groups of claims. The groups include Group I, Claims 1-6, drawn to a vegetable chip; Group II, Claims 7-18, drawn to a method of making a planar potato chip; and Group III, claims 19-25, drawn to a method of making a planar corn chip. Applicant elects Group I, Claims 1-6, with traverse.

2. In order to make out a prima facie case for a restriction requirement, the restriction requirement must point out that the inventions are independent or distinct as claimed, and that there would be a serious burden on the Examiner if restriction is not required. M.P.E.P. 803. The restriction requirement does not allege that there would be a serious burden on the Examiner if restriction is not required, and therefore fails to make out a prima facie restriction requirement.

a. In addition, in this instance, all three groups are classed in class 426, food or edible material. The three subclasses are all under main line class 531 for processes for preparing or treating compositions by combining diverse food materials. Subclass 637 is for potato items (under class 615 for basic ingredient other than extract, starch or protein), such as potato chips; subclass 550 is for non-cereal base, and as such includes potatoes. Subclass 560 is directed to flakes, chips, filaments, sheets, or pellets. Subclass 560 may thus include planar vegetable chips as recited in Claim 1. Thus, there is no conflict between examining Group I, directed to a vegetable chip that may include potatoes, and Group II, which is directed to a non-cereal base, such as potatoes. There is also no conflict between examining either of these and subclass 560, which is directed to product forms, such as flakes, chips, and so on.

b. A search of Group I, concerning a substantially planar vegetable chip would likely include the potato chips made by the method of Claim 8, in Group II, and a substantially planar corn chip made by the method of Claim 19, in Group III. A search for a method of making a substantially planar potato chip as described in Claim 8, Group II, would likely include the vegetable chips claimed in Claim 1 and the remainder of Group I. A search of class 426, subclass 560 covering product forms, as alleged in the restriction requirement, would almost certainly include all three groups, since class 560 is not limited to potatoes or corn. Thus, even if there were a serious burden on the Examiner, requiring the restriction

would not relieve the Examiner of the burden of examining any group of the claims as now constituted.

3. The restriction requirement states that the restriction as between Groups I and II, and as between Groups III, is proper because the product as claimed can be made by another and materially different process. The restriction requirement states that the different process is one in which the vegetable chip is prepared from vegetable slices rather than using a dough material, as required in the claims of Groups II and III.

Applicant points out that Group I, Claim 1, requires a "substantially planar vegetable chip." When potato chips are made from vegetable slices, the result is a product that is not substantially planar, but rather is convoluted and may assume the general shape of a saddle as a result of its deformation during the cooking process. See, e.g., U.S. Pat. No. 4,152,975, which describes slicing a potato and frying it in oil, resulting in the usual wavy or "saddle shape" potato chip. See col. 2, lines 27-41, and Fig. 1, element PC depicting flat, planar freshly sliced raw potatoes, and Fig. 3, element PC, depicting wavy potato chips after they have been cooked in the oil.

Note also that the vegetable chip product of Group I as claimed has a limitation of "about eight square inches" of cross section. One embodiment of such a chip would be about 2 inches x 4 inches across, which is a very large cross section. If any vegetable chip made by a slicing and frying process is subject to "potato chipping," i.e. assuming a saddle or convoluted shape other than planar, it would be a very large chip, such as the vegetable chip of Claim 1. Applicant has thus overcome the argument that the product as claimed can be made by another and materially different process.

4. Applicant has shown that the restriction requirement is improper because there is no serious burden on the Examiner to examine all the claims of the application. In addition, the claims are all classed in several subclasses of class 426 and subclass 531 which are not mutually exclusive. Analysis of the claims further shows that any burden on the Examiner

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will not be relieved by imposing a restriction requirement. The Examiner is respectfully requested to withdraw the restriction requirement and to advance the application to examination of all the claims.

Respectfully submitted,



David W. Okey, Reg. No. 42959
Reinhart Boerner Van Deuren P.C.
483 N. Mulford Road, Suite 7
Rockford, Illinois 61107
(815) 484-1900 (telephone)
(815) 484-1032 (facsimile)

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